

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
KATHLEEN CAHILL }

For Appellant: Kathleen Cahill,
in pro. per.

For Respondent: Allen R. Wildermuth
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation. Code from the action of the Franchise Tax Board on the protest of Kathleen Cahill against a proposed assessment of additional personal income tax and penalties in the total amount of \$66.65 for the year 1979.

Appeal of Kathleen Cahill

The sole issue presented by this appeal is whether appellant * has established error in respondent's proposed assessment of additional personal income tax or in the penalties assessed for the year in issue.

On her California personal income tax return form 540 for the year 1979, appellant failed to disclose the required information regarding her income and deductions. In the space provided for this information, appellant entered the statement: "Object: **self-incrimination.**" Respondent subsequently demanded that appellant file the required return. When appellant responded by simply citing her Fifth Amendment privilege against self-incrimination in support of her refusal to file a valid personal income tax return, the **subject** notice of proposed assessment was issued. The proposed assessment, which is based upon information obtained from the California Employment Development Department, includes penalties for failure to file a return, failure to file upon notice and demand, and negligence.

It is well settled that respondent's determinations of tax are presumptively correct, and appellant bears the burden of proving them erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) This rule also applies to the penalties assessed in this case. (Appeal of K. L. Durham, supra; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) No such proof has been presented here.

In support of her position, appellant contends that the assertion of her Fifth Amendment privilege against self-incrimination excuses her failure to file a return for the year in issue. This **contention** has repeatedly been rejected by the courts and this board. (See, e.g., United States v. Daily, 481 F.2d 28 (8th Cir.), cert. den., 414 U.S. 1064 [38 L.Ed.2d 469] (1973); Appeal of Robert A. Skower, Cal. St. Bd. of Equal., Feb. 1, 1982.) There is no **reason to** reach a different conclusion in the instant appeal.

On the basis of the evidence before us, we can only conclude that respondent correctly computed appellant's **tax** liability, and that the imposition of penalties **was** fully justified. Respondent's action in this matter will, therefore, be sustained.

Appeal of - Kathleen Cahill

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the **action** of the Franchise Tax Board on the protest of Kathleen Cahill **against** a proposed assessment of additional personal income tax and penalties in the total amount of **\$66.65** for the year 1979, be and the same **is** hereby sustained.

Done at Sacramento, California, this 17th day of November ,
1982, by the State Board of Equalization, with Board Members
Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr. , Member

Richard Nevins, Member

, Member

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In the Matter of the Appeal of)
KATHLEEN CAHILL)
)

ORDER DENYING PETITION FOR REHEARING

Upon consideration of the petition filed December 16, 1982, by Kathleen Cahill for rehearing of her appeal from the action of the Franchise Tax Board, we are of the opinion that none of the grounds set forth in the petition constitute cause for the granting thereof and, accordingly, it is hereby ordered that the petition be and the same is hereby denied and that our order of November 17, 1982, be and the same is hereby affirmed.

'Done at Sacramento, California, this 1st day of March, '1983, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Nevins, and Mr. Harvey **present.**

- - - _____, Chairman
Ernest J. Dronenburg, Jr., Member
Conway H. Collis, Member
Richard Nevins, Member
Walter Harvey*, Member

*For Kenneth Cory, per Government Code Section 7.9